

BRYAN ALAN YOUNG,	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	No. 11-4180
	:	
LOUIS FOLINO, <u>et al.</u> ,	:	
Respondents.	:	
	:	

AND NOW, this 3rd day of December, 2012, upon careful and independent consideration of the petition for writ of habeas corpus, and after review of the Report and Recommendation of United States Magistrate Judge David R. Strawbridge (Doc. No. 20) and the Objections filed by Petitioner and Respondents (Doc. Nos. 22, 23), it is hereby **ORDERED** that:

- ¹We write briefly to address Respondents' objection to Judge Strawbridge's finding that the Superior Court's decision that photographs depicting Petitioner's tattoo were properly admitted at trial was "contrary to a reasonable application of federal law." (See Report and Recommendation ("R&R"), pp. 38-43.) Judge Strawbridge made this finding in his discussion of Petitioner's claim that trial counsel was ineffective for failing to object to admission of this evidence. We agree with Judge Strawbridge that the photographs were plainly inadmissible, and we share the concerns aptly stated in his Report and Recommendation. It is unclear, however, that admission of this evidence concerns federal, rather than state law. Indeed, Judge Strawbridge recognized in his Report and Recommendation that "the admissibility of evidence does not provide a grounds for habeas relief." (R&R, p. 37.) In any event, we need not resolve this issue in that we agree with Judge Strawbridge's ultimate conclusion that Petitioner's claim of ineffective assistance is without merit based upon Petitioner's failure to demonstrate either that counsel's performance was deficient or that Petitioner was prejudiced by the admission of this evidence.

3. The petition for a writ of habeas corpus is **DENIED WITHOUT AN EVIDENTIARY HEARING**;
4. There is no basis for the issuance of a certificate of appealability; and
5. The Clerk of Court is directed to mark this case **CLOSED**.

BY THE COURT:

/s/ Mitchell S. Goldberg

MITCHELL S. GOLDBERG, J.